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IN THE MATTER OF:

DISTRIBUTION OF 2000, : No. 2008-02

2002, 2003 CABLE :

ROYALTY FUNDS : CD 2000-03

: Phase II

Monday,

June 3, 2013

Fourth Floor Hearing Room

Madison Building

Library of Congress

101 Independence Avenue, SE

Washington, DC

The above-entitled matter came on
for hearing, pursuant to notice, at 9:30 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT,

Chief Judge

THE HONORABLE JESSE FEDER

THE HONORABLE DAVID STRICKLER

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3

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:32 a.m.)

3 CHIEF JUDGE BARNETT: There has

4 been one change since we were all here before.

5 It used to be that the microphones on counsel

6 table were not live unless you pressed.

7 They're the opposite now. They're always

8 live. So, if you're going to confer with one

9 another be sure to mute the microphone.

10 Okay, good morning, all. This is

11 the date and time set for hearing in Phase II

12 of the distribution proceedings commenced

13 under Copyright Royalty Board Docket Number

14 2008-2 in re the distribution of cable royalty

15 funds for the years 2000 through 2003.

16 I think I have met you all. I'm

17 Judge Suzanne Barnett, the proverbial last man

18 standing since we last met. Judge Strasser

19 very happily reclaimed his position as senior

20 counsel to the Copyright Royalty Board. Judge

21 Roberts accepted a position as Senior Counsel

22 to the Register of Copyrights.

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1 identified as being matches.
2 JUDGE STRICKLER: Those various
3 iterations were never compiled into one list?
4 THE WITNESS: I don't believe so.
5 JUDGE STRICKLER: Do you know a
6 percentage of total titles that fell into that
7 gray category, if I may call it that, that you
8 had to send back to MPAA?
9 THE WITNESS: I do not know.
10 JUDGE STRICKLER: You were
11 supposed to, you were charged with removing
12 program titles identified by Tribune as
13 broadcast type because those would not be
14 covered by this proceeding. And I think you
15 acknowledged that your company missed those
16 and Dr. Gray caught those; is that correct?
17 THE WITNESS: The network, those
18 that should have been attributed to ABC, NBC,
19 and CBS --
20 JUDGE STRICKLER: Yes.
21 THE WITNESS: -- yes.
22 JUDGE STRICKLER: that's what I

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1 meant. Can you tell us why it was that those
2 were missed?
3 THE WITNESS: As I said, it was a
4 very iterative process. We were doing a lot
5 of what-if analysis, you know, show-me
6 analysis, those kind of things. And in some
7 of the iterations, we went back to the
8 underlying raw data, as opposed to the
9 potentially compensable, just to see if there
10 were other matches that we could use as
11 leverage to say, hey, it matched here, maybe
12 it makes sense here. And just in the final
13 deliverable, we just, it was an oversight and
14 was not included.
15 JUDGE STRICKLER: It fell out in
16 the final deliverable? It fell out for all of
17 the network programming? So Dr. Gray was able
18 to find -- so you had included all the network
19 programming in the final deliverable?
20 THE WITNESS: I believe so, yes.
21 JUDGE STRICKLER: Do you know how
22 Dr. Gray caught it?

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1 THE WITNESS: I do not.
2 CHIEF JUDGE BARNETT: Any follow-
3 on questions then from counsel?
4 MR. OLANIRAN: No, your Honor.
5 MR. BOYDSTON: No, your Honor.
6 CHIEF JUDGE BARNETT: Thank you,
7 Mr. Patterson. You may be excused.
8 (Witness excused.)
9 MR. OLANIRAN: Your Honor, MPAA
10 would like to call Mr. Paul Lindstrom.
11 CHIEF JUDGE BARNETT: An obstacle
12 course there for you.
13 WHEREUPON,
14 PAUL LINDSTROM
15 was called as a witness by Counsel for the
16 Motion Picture Association of America and,
17 having been first duly sworn, assumed the
18 witness stand, was examined and testified as
19 follows:
20 DIRECT EXAMINATION
21 BY MR. OLANIRAN:
22 Q Good afternoon, Mr. Lindstrom.

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1 Greg Olaniran. I represent MPAA-Represented
2 Program Suppliers. Would you please state
3 your name and spell it for the record?
4 A It's Paul Lindstrom. That's L-I-
5 N-D-S-T-R-O-M.
6 Q And, Mr. Lindstrom, what's your
7 educational background?
8 A I have a bachelor's degree from
9 NYU.
10 Q And where do you work?
11 A I work for Nielsen.
12 Q How long have you been with
13 Nielsen?
14 A I've been working for Nielsen, at
15 this point, slightly over 35 years. I just
16 passed an anniversary about a month ago.
17 Q That's a long time. What does
18 Nielsen do?
19 A Nielsen is a market research
20 company. It's a supplier of information on
21 both the marketing research side and media
22 research side. It's most well known for the

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1 television ratings, I think.

2 Q Okay. And what position do you
3 hold with Nielsen?

4 A I'm in a senior vice president
5 position with a group within Nielsen called
6 Strategic Media Research. We focus on
7 producing custom research and custom analysis
8 for a wide variety of clients.

9 Q And what are your responsibilities
10 within that group?

11 A I'm responsible for the products
12 that are being issued from that group and a
13 primary responsibility for the design work on
14 the research that we do within that group. It
15 covers, as I said, both custom research and
16 custom analysis.

17 Q And what is custom research versus
18 custom analysis?

19 A I probably should have explained
20 that as I started, but, just to clarify,
21 custom research is work where you're going out
22 to establish a new database. You're doing

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1 separate data collection, often for an
2 individual client. Custom analysis is a
3 situation where you're going into an existing
4 database. It might be the diary, it might be
5 meters. It might be a variety of different
6 existing databases, but you're looking at it
7 in a new custom way, usually, again, for a
8 single client.

9 Q Okay. And would you please
10 describe the range of your experience, if you
11 will, over the 35 years that you've been at
12 Nielsen?

13 A In the position that I'm in, I
14 actually have to do the research work top to
15 bottom. So I've been involved in every aspect
16 from the operational side of the data
17 collection, the data processing, data
18 analysis, questionnaire design, the research
19 design into what needs to be done, sampling
20 processes, literally top to bottom from
21 beginning to end with research projects going
22 through the media group.

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1 Q And all of, all of this experience
2 is under the umbrella of custom research
3 and/or custom analysis?

4 A Almost all of it, with some
5 exceptions. We've had products that have gone
6 on from the custom research group to become
7 syndicated entities out within the industry.
8 I could go into details, but it's probably not
9 key right now.

10 Q And in the course of your
11 experience, how much statistical analysis, to
12 what extent does statistical analysis feature
13 in your work?

14 A Statistical analysis comes in
15 quite frequently. It becomes part of the
16 research design, and it becomes part of the
17 process that I have to go, in terms of working
18 with our clients to help them understand and
19 to utilize it. So it's a very pragmatic
20 approach and one that, again, I've been
21 required to get into for, you know, nearly all
22 of those 35 years in this type of role.

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1 Q And in terms of statistical
2 analysis, are you talking in terms of sample
3 design, sample selection, that sort of thing?

4 A It's impossible to design a
5 research project without being intimately
6 involved in the sample design and sample
7 selection. Any type of issues that could crop
8 up all tie into it; so it, therefore, has to
9 be part of the design from the very outset.

10 Q And for what type of clients do
11 you perform custom research and custom
12 analysis?

13 A It's been a wide range of media
14 clients. We've done television broadcasters,
15 local stations, national cable networks, local
16 cable systems, MSOs. We've worked with
17 internet companies, cinema advertising
18 companies, place-based, almost, again, top to
19 bottom within the media field. It's been a
20 particular emphasis on companies that are
21 looking to launch new media and to go out and
22 become ad supported. So as it has grown,

1 literally, beginning with cable straight on
2 through up to the first work that Nielsen has
3 done on the internet, I've been responsible
4 for.
5 Q And so you've worked with cable
6 systems. Have you done audience measurement
7 work for, television audience measurement work
8 for cable systems?
9 A Very extensive audience work for
10 both cable systems and cable networks.
11 Q What about broadcast stations?
12 A Yes, for broadcasters, as well.
13 Q And why would a cable system
14 require you to do audience measurement work?
15 A There's a variety of reasons on
16 why it's done, but the most common is a way of
17 being able to document audiences in order to
18 sell them for advertising purposes. There's
19 a need for an independent barometer so that
20 both buyers and sellers in the marketplace can
21 agree on what they think they're going to be
22 getting and then whether or not that was

1 delivered.
2 Q Does the same thing apply to the
3 audience measurement work you've done for
4 broadcast stations, the same --
5 A That's true. In most instances,
6 we're being commissioned in order to do
7 audience work for the purposes of buying and
8 selling advertising in the television
9 marketplace.
10 Q Have you previously testified in
11 any distribution proceedings in the past?
12 A I've been involved in all of the
13 proceedings in which the MPAA has commissioned
14 work from us. That has ended up being
15 virtually all of the phase one hearings since
16 the 1980 proceedings.
17 MR. OLANIRAN: Your Honors, at
18 this point, based on Mr. Lindstrom's years of
19 experience in the field, I offer Mr. Lindstrom
20 as an expert in the field of market research
21 with an emphasis on TV and cable audience
22 measurement.

1 MR. BOYDSTON: No objection.
2 CHIEF JUDGE BARNETT: Mr.
3 Lindstrom is qualified as an expert in those
4 areas.
5 MR. OLANIRAN: Thank you, your
6 Honor.
7 BY MR. OLANIRAN:
8 Q Mr. Lindstrom, what were you asked
9 to do for this proceeding?
10 A We were asked to produce estimates
11 of distant cable viewing to specific stations,
12 as supplied to us.
13 Q Did you prepare a written report
14 of your work for this proceeding?
15 A Yes, we did.
16 Q Okay.
17 MR. OLANIRAN: Approach the
18 witness, your Honor?
19 CHIEF JUDGE BARNETT: Certainly.
20 BY MR. OLANIRAN:
21 Q Mr. Lindstrom, I'm handing you a
22 pre-marked MPAA Exhibit 363. Again, in the

1 interest of the environment, I won't provide
2 copies to the Judges and counsel.
3 CHIEF JUDGE BARNETT: Can we just
4 identify, are you getting ready to identify it
5 for the record?
6 MR. OLANIRAN: Yes.
7 CHIEF JUDGE BARNETT: Thank you.
8 MR. BOYDSTON: Your Honor, could
9 it be identified the way it was identified
10 when it was produced to us? In other words,
11 I understand it's an exhibit on something that
12 was, I don't know where from.
13 CHIEF JUDGE BARNETT: Sure.
14 MR. BOYDSTON: Or I'll take
15 originals.
16 CHIEF JUDGE BARNETT: You can have
17 a copy.
18 BY MR. OLANIRAN:
19 Q Mr. Lindstrom, you should have in
20 front of you a document pre-marked MPAA
21 Exhibit 363. Do you have that?
22 A Yes, I do.

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1 Q And the document is, what is the
2 title of that document?
3 A "Direct Testimony of Paul D.
4 Lindstrom."
5 Q And it's dated May 30, 2012?
6 A Yes, it is.
7 Q Okay. Is this your written
8 testimony for this proceeding?
9 A Yes, it is.
10 Q And do you have any corrections or
11 additions to your testimony?
12 A Yes. There's three of them, I
13 believe.
14 Q Just go ahead.
15 A I'll have to find them in there.
16 Bear with me for one moment. On page four, in
17 the first paragraph under data collection,
18 approximately halfway down, it talks about the
19 months of November, February, May, and July,
20 which are known as the sweeps. It should also
21 say "and, in some instances, October and
22 March."

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1 Q That's at the end of the sentence?
2 A That would be at the end of the
3 sentence. There are two additional
4 measurement periods, the ones that are not
5 done for all markets and are, therefore, not
6 formally known as the sweeps.
7 Q Okay. So next one?
8 A The second would be on page six,
9 the second sentence from the top, it says,
10 "This is reported in the form of minutes of
11 viewing by households," that should say it's
12 reported in the form of quarter hours of
13 viewing by households.
14 Q Do you have any other corrections?
15 A Then approximately in the zero
16 viewing instances, the next paragraph,
17 approximately halfway down on page six, it
18 says "Nielsen's custom analysis," and it
19 should say "Dr. Gray's analysis."
20 JUDGE STRICKLER: Can you clarify,
21 sir, where -- because it says Nielsen's custom
22 analysis --

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1 THE WITNESS: It says, "First, it
2 is important to recognize that Nielsen's
3 custom analysis excluded --"
4 JUDGE STRICKLER: And you're
5 replacing it with what?
6 THE WITNESS: It should be "Dr.
7 Gray's custom analysis of the Nielsen data."
8 BY MR. OLANIRAN:
9 Q And Dr. Gray's custom analysis or
10 Dr. Gray's analysis?
11 A Dr. Gray's analysis would be fine,
12 of the Nielsen data. And then approximately
13 the fourth line from the bottom, it says
14 there, as well, "Nielsen's custom analysis,"
15 and it should be "Dr. Gray's analysis."
16 Q Of the Nielsen data also; is that
17 right?
18 A That would be correct.
19 Q Okay. Any other corrections?
20 A No.
21 Q Can I direct your attention to the
22 last sentence on that page? Should that be

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1 Nielsen's custom analysis or Dr. Gray's
2 analysis, just to --
3 A That should be Nielsen's custom
4 analysis, so that would stay as it is.
5 Q Okay. Thank you. And with those
6 corrections you've just made, do you declare
7 your testimony to be true and correct --
8 A Yes, I do. Oops, sorry.
9 Q -- and of your personal knowledge?
10 A Yes, I do.
11 MR. OLANIRAN: Your Honors, I move
12 for admission of Exhibit, MPAA Exhibit 363.
13 MR. BOYDSTON: No objection.
14 MR. HARRINGTON: No objection.
15 CHIEF JUDGE BARNETT: Exhibit 363
16 is admitted, as corrected.
17 (Whereupon, MPAA Exhibit No. 363
18 was received into evidence.)
19 MR. OLANIRAN: Thank you.
20 BY MR. OLANIRAN:
21 Q You stated earlier that you were
22 asked to do some work with regard to 2000

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1 through 2003 Nielsen information for MPAA.
2 Could you please describe, just very briefly,
3 exactly what you did for MPAA?

4 A We produced estimates of viewing
5 for individual stations among distant cable
6 households. The process that we used was that
7 the MPAA supplied Nielsen with a list of
8 stations which had been distantly transmitted
9 by cable systems in 2000 to 2003. In order to
10 limit the viewing that we were reporting on to
11 only distant viewing, we were supplied with an
12 analysis that had been done which defined
13 counties for each stations so that they were
14 either classified as local or distant. And we
15 eliminated all local counties. Again, that
16 information was provided to us by the MPAA
17 with the definitions so that the data was
18 restricted to only distant counties for each
19 of those stations.

20 We then went through the database
21 and further cut back so that we eliminated all
22 non-cable households from those distant

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1 counties that had viewing to those stations so
2 that what was left was ultimately a sample for
3 each station that was based on distant
4 definitions and cable viewing.

5 Q The work that you did for MPAA, is
6 that considered custom analysis or custom
7 research?

8 A That's custom analysis. The goal
9 that we have had with this has been the idea
10 of being able to analyze what is the database
11 that's currently being used in the regular
12 television measurement, and so the diary
13 database allowed us to do that with the same
14 types of metrics, the same reporting, and the
15 same basic data set that's currently used for
16 the industry.

17 Q And what exactly is a diary?
18 What's a diary?

19 A The diary that's being used and
20 referred to here is a seven-day diary. It's
21 basically a log that's kept by the household.
22 It pre-lists quarter hours, 24 hours a day,

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1 for seven days. And the households are asked
2 to supply certain pieces of information. Each
3 time they view, they're to indicate what the
4 channel member, the call letters, and the
5 program was, and then who within the household
6 was viewing.

7 Q And how does Nielsen select its
8 households?

9 A It is a random sampling process in
10 order to identify those homes.

11 Q Okay. And after going through the
12 process where you looked at the, you excluded
13 the local counties from the viewing data and
14 you also limited non-cable household viewing.
15 What then did you do?

16 A What we would be doing is to
17 generate estimates of the projection value of
18 the amount of tuning that was being done by
19 households within our sample who met that
20 definition on a quarter-hour basis for each
21 station within the sample.

22 Q Well, you talk about estimates of

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1 projected viewing. What exactly do you mean
2 by that?

3 A It would be an estimate of how
4 many households would have been tuned during
5 the average quarter hour that were distant and
6 cable.

7 Q And in doing the estimate, you're
8 not going around and measuring in every TV
9 set. I think we know that. How are you --
10 let me make sure I phrase this correctly --
11 how are you projecting from the number of
12 households that have provided you data to the
13 remainder of a television tuning population,
14 if you will?

15 A What's important to keep in mind
16 with the measurement that we're talking about
17 here is that, as I noted, the diary itself was
18 a seven-day diary. The sweeps are a four-week
19 period of time. Each sweep is approximately -
20 - or independent samples of around 25,000
21 households. That means during each sweep,
22 we've got 100,00 home, so this analysis would

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1 have been based on more than 400,00 households
 2 contributing to it.
 3 We searched those individual
 4 records to meet those homes that qualified
 5 and, again, find the viewing to those specific
 6 stations and identify it and add it up quarter
 7 hour by quarter hour.
 8 Q Okay. You testified in the 1997
 9 phase two cable royalties proceeding, correct?
 10 A That is correct.
 11 Q And in that proceeding, the issue
 12 of zero viewing came up. Could you please
 13 explain, first explain the issues of what zero
 14 viewing means, if anything?
 15 A There's one thing that I need to
 16 start out with because zero viewing is a
 17 little bit of a misnomer. It's kind of a
 18 colloquialism that's come into play.
 19 But Nielsen actually does not
 20 estimate zero viewing. In instances, there is
 21 viewing that's too low or of a certain
 22 magnitude that can't be used, we'll tend to

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1 put either carets or asterisks or footnotes of
 2 some kind to say that the audiences small but
 3 not zero. I mean, we wouldn't go through and
 4 say nobody in fact would watch something.
 5 What we are saying when we go
 6 through with these cells with what's being
 7 indicated with zero viewing is that there was
 8 no reported viewing within that sample of
 9 homes during that day and quarter hour. And
 10 that's different, that idea of going, when you
 11 get into very finite, very specific quarter
 12 hours defined, that there was no specific
 13 mentions of viewing within the sample is not
 14 surprising.
 15 Q And when you said that you tend to
 16 put carets, where are you talking about that
 17 you place this --
 18 A They're within the reports
 19 themselves. The difference between the report
 20 that we produced for the MPAA and what we
 21 normally do with syndicated research where
 22 these types of carets will be put in is that

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1 the purpose of the study was really to
 2 aggregate viewing, to aggregate quarter hours
 3 across stations, across time, and across
 4 sweeps to accumulate sufficient sample size.
 5 Under that scenario, there's the necessity of
 6 being able to add and to do your calculations,
 7 so you have to put in a numeric value. And so
 8 as a result, in order to allow for the
 9 manipulation of the data, the reports and the
 10 data that we supplied, it's carrying a zero
 11 numeric value because you couldn't do that
 12 with an asterisk or a caret or some such
 13 thing. But it shouldn't be interpreted as a
 14 zero.
 15 Q So if I understand you correctly,
 16 as to the data that Nielsen itself maintains,
 17 you put the symbols and notes in the database
 18 to say there was none reported viewing. But
 19 with respect to the data that you provide for
 20 MPAA, you have to put zeros in in the quarter
 21 hours essentially to allow for manipulation of
 22 the data?

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1 A That is correct.
 2 JUDGE STRICKLER: May I interject
 3 for a second?
 4 MR. OLANIRAN: Absolutely, your
 5 Honor.
 6 JUDGE STRICKLER: Mr. Lindstrom,
 7 you're doing a sample with the Nielsen
 8 diaries, correct?
 9 THE WITNESS: That's correct.
 10 JUDGE STRICKLER: And you end up
 11 with these very low numbers, and you don't
 12 know what they are, so you put in the caret or
 13 the asterisk, as you say, correct?
 14 THE WITNESS: That's correct.
 15 JUDGE STRICKLER: Is there a
 16 margin of error or a level of confidence
 17 associated with the numbers, particularly at
 18 the lower level, where you have these carets
 19 or asterisks so that we know what -- I know,
 20 because the zero bound there, so we don't have
 21 a negative number of people throwing things at
 22 the television and refusing to watch it

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1 adamantly but we have either zero or some
2 number above it. How do you statistically, if
3 at all, how does Nielsen statistically, if at
4 all, account for a margin of error within a
5 certain level of confidence?

6 THE WITNESS: We didn't produce
7 that data for this particular report.

8 JUDGE STRICKLER: So, so -- I'm
9 sorry. Go ahead.

10 THE WITNESS: No, so I'm saying
11 that I don't have that data to be able to
12 readily identify.

13 JUDGE STRICKLER: But Nielsen
14 produces that sort of information as a matter
15 of course is what you're saying?

16 THE WITNESS: Yes, it is possible
17 to produce that sort of data, and we do it
18 frequently. What you would expect, and this
19 goes back to is that, for any given station on
20 any given quarter hour, you would expect high
21 levels of relative error. It's the
22 accumulation of information that, in fact,

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1 this was a respondent and you had two of them,
2 and that was your entire sample. And you were
3 viewing a quarter hour, and it could be a
4 yes/no. And if that were the case where you
5 had two respondents, then it would be a yes or
6 a no. You'd either have a zero, a 50 rating,
7 or 100 rating.

8 But the actual viewing level or
9 rating level that you would end up expecting
10 under this type of scenario, you know, even
11 traditional broadcast ratings might be about
12 a one rating, which is about one percent of
13 the audience, so under that type of scenario,
14 you would fully expect that, in fact, as you
15 started adding sample, the bulk of the sample
16 would still be non-viewers. They would be no
17 to having viewed that quarter hour. I mean,
18 think about those nos as being your zeros
19 because that's really what it is, a yes/no, no
20 is a zero.

21 And you would have to add in 99
22 nos in order to, in fact, give the accurate

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1 ends up reducing those error levels because
2 you have more different people, more
3 independent samples that are going together in
4 order to generate that, and it's part of the
5 reason, again, that you would expect to see
6 the results in the fashion that we are. The
7 relative error on any given quarter hour for
8 any given station, again, would be very high.

9 MR. OLANIRAN: Is your Honor --

10 JUDGE STRICKLER: Thank you.

11 BY MR. OLANIRAN:

12 Q And I wanted to follow up. Why
13 does the non-reported viewing occur,
14 particularly with respect to the data that you
15 provided to MPAA?

16 A I think one way to think about
17 this, and it's not a direct comparison but
18 it's an analogous, that each quarter hour, in
19 many ways, is a sampling point. And what
20 you're doing is trying to increase your
21 sampling points. If you were to think about
22 it, though, in a reverse way of saying suppose

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1 reflection of the one-percent viewing level
2 that was there. That's the reason why it's
3 important to accumulate the sample. Low
4 sample sizes with very small levels of
5 viewing, which, again, any given station for
6 any given quarter hour on a distant cable
7 basis will be very, very low. In order to
8 measure that, you need to build up the sample
9 and you fully expect to be including a lot of
10 these non-viewing instances in order to
11 accurately average out across time, across
12 programs, and across viewing instances.

13 I don't know if that helped, but
14 it's that basic idea if you only do that one
15 quarter hour and if you only had those two
16 people, then the response that you get is, in
17 fact, not going to be accurate. It is only
18 the accumulation of quarter hours in sample
19 size that allows the measures to be an
20 accurate reflection.

21 Q You've made a lot of references to
22 quarter hours. What are quarter hours? I

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1 know it's somewhat elemental but . . .
 2 A Again, a quarter hour is the time
 3 frame that's being measured within the diary.
 4 So within a diary, it will say, 8 to 8:15,
 5 what did you do, you know, I either didn't
 6 watch television or I watched television and
 7 it was this channel, this call letters, and
 8 this program name, so that we can identify
 9 what it is that's being viewed.

10 And so, in the same fashion, if
 11 you think about this yes/no for a particular
 12 station, again, people are watching a lot of
 13 other television that is, in fact, being
 14 recorded there. It's not a matter of they're
 15 not viewing. We're looking at all their
 16 viewing. We're just not finding very much
 17 under those circumstances of some of the
 18 distant cable broadcast signals.

19 JUDGE STRICKLER: Counsel, may I
 20 interject again? The diary samples you do,
 21 those are diary samples that are sent to homes
 22 that are already metered; is that correct?

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1 THE WITNESS: No, that's not.
 2 They're independent samples. There's a
 3 separate metered measurement that goes on,
 4 both in terms of local markets, some of the
 5 metered markets, and on a national basis. The
 6 diaries are independent of that.

7 JUDGE STRICKLER: I was probably
 8 confused, and it's probably my fault. You say
 9 on page four of your direct statement in 2000
 10 to 2003 diary data was collected in Nielsen's
 11 metered markets, so you're saying the diary
 12 data came out of the metered markets but not
 13 out of the same households that had meters; is
 14 that it?

15 THE WITNESS: I actually realized
 16 as I was going through this and saying, what
 17 I was trying to convey probably wasn't
 18 conveyed very well there. And I'm actually
 19 glad that you raised it so that I can clarify.
 20 We do have a large number of markets that, in
 21 fact, are metered. It was 50-plus, I believe,
 22 at the time when these measurements were going

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1 on. But what I wanted to stress within this
 2 is that we weren't actually combining the
 3 metered data and the diary data. The mixing
 4 of those two pieces, if you just added them up
 5 together, would kind of compound a lot of, it
 6 would compound certain types of issues. And
 7 this isn't a comment on Dr. Gray's analysis,
 8 which I think is a different thing.

9 But the idea of saying we do have
 10 diaries in metered markets that we could
 11 utilize for purposes of this analysis, so
 12 we're looking at diary data across the entire
 13 country, including metered markets where we
 14 have diary sample that's also being collected.

15 JUDGE STRICKLER: So the diary
 16 data is in metered markets and also outside of
 17 metered markets?

18 THE WITNESS: That's correct. And
 19 that's what I was trying to say. So it's not
 20 a case of there are diary markets that are
 21 some portion of the country and metered
 22 markets for some portion of the country. We,

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1 in fact, at this point in time, did diaries
 2 across the entire country, which are included
 3 here.

4 JUDGE STRICKLER: And metered
 5 markets are, those meters run not just during
 6 the sweeps months but 12 months a year; is
 7 that correct?

8 THE WITNESS: That's correct.
 9 Twenty-four hours a day, 365 days a year.

10 JUDGE STRICKLER: And are there
 11 more people metered, if you will, than diary,
 12 or households I should say?

13 THE WITNESS: No. The diary is
 14 substantially larger in terms of the sample
 15 sizes. You couldn't afford to have metered
 16 samples of the type of size, certainly at the
 17 point in time that we're talking about in the
 18 early 2000s. Sample size is the magnitude of
 19 what you can do with a diary. That's why we
 20 took the approach with the diary simply
 21 because, again, in order to measure very low
 22 viewing levels, you need very large sample

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1 sizes, which only the diary can provide.
2 There's really no other good database of its
3 kind to be able to measure viewing of these
4 types of levels.

5 JUDGE STRICKLER: We have to go
6 from the local diary information, we took it
7 from local information to more national
8 information through a regression analysis, but
9 the meters, if I understand this correctly,
10 while it's a smaller sample, the meters would
11 give you that overall information without
12 having to do a regression. It would just be
13 a really small sample. Is that the problem?

14 THE WITNESS: Without commenting
15 on the regression because I want to hear
16 specifically what that question is because I
17 think it actually sounded as if there was
18 something -- I think we'll have to clarify
19 that at some point in terms of what the
20 regression was being used in order to
21 estimate. But, I'm sorry, if you could just
22 clarify the tail end of that.

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1 absence of the sample size to be able to do an
2 analysis of this type adequately, the diary is
3 really a preferable approach.

4 JUDGE STRICKLER: Thank you.

5 JUDGE FEDER: Now, if I understood
6 your testimony correctly, each sweep includes
7 about 100,000 homes?

8 THE WITNESS: That's correct.
9 Four independent samples of seven days each
10 during a month.

11 JUDGE FEDER: Okay. And then so
12 over the course of a year, we're talking
13 400,000 homes that are sampled?

14 THE WITNESS: That's correct. And
15 some additional within March and October.

16 JUDGE FEDER: And then, as part of
17 this process, you then excluded all those
18 samples that are in local markets, as opposed
19 to distant markets, and those samples that are
20 non-cable households?

21 THE WITNESS: Yes. And it's
22 important to keep in mind, just to clarify,

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1 JUDGE STRICKLER: Well, let me ask
2 it more generally. Would there have been a
3 benefit to using the meters, as opposed to the
4 diaries, notwithstanding the fact that the
5 meters are a smaller sample?

6 THE WITNESS: I think that, if one
7 were to ask most people within the television
8 business, they would probably say that the
9 meter, as a data collection method, is a
10 superior method to the diary. It's why the
11 industry has shifted over time to that.
12 There's been extended metered markets,
13 etcetera. The diary does a very good job at
14 what it does, but the very fact that a meter
15 can get very precise and 365 days a year is a
16 huge plus.

17 But the reality is is that, if you
18 were going to, again, try and measure under
19 these very small and finite circumstances,
20 that you need extremely large sample sizes in
21 order to be able to do it and, at this point
22 in time, it wasn't out there. So given the

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1 when we're talking about it, that this is done
2 for each station. So each station is
3 specifically identified as to what should be
4 the local counties, so it's not a global type
5 of definition. It's done going for this
6 station these are the counties that are local,
7 for this station those are the counties that
8 are local.

9 JUDGE FEDER: So for any given
10 station, you're obviously talking about much
11 fewer than 400,000 samples to start with. And
12 then that number of samples is declining as
13 you exclude essentially non-compensable
14 categories in the households that don't have
15 cable?

16 THE WITNESS: That's correct.

17 JUDGE FEDER: So is there anywhere
18 in the report that you produced that tells us
19 what the sample size is for the various sample
20 stations that are in this survey?

21 THE WITNESS: The answer to that
22 is, perhaps, slightly complicated because the

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1 way that you described it is true, but you
2 would still be thinking, for purposes of how
3 you would examine the data, as the sample size
4 -- there are really two factors, sorry, in
5 terms of producing anything on relative
6 errors, for example. One is sample size, and
7 one is some form of correlation of viewing in
8 terms of who's doing all this viewing? Is it
9 the same people or different ones? Is it kind
10 of unique?

11 For a sample size purpose, the
12 actual sample size that you would be looking
13 at, despite the fact that you're applying
14 filters, is actually the 400,000 that's going
15 into the base because part of that estimate is
16 all of the people that can't view or be
17 included in that as a result of being local.
18 All of those people who, in fact, are non-
19 cable. They don't come out of that base for
20 estimating the size of the viewing population
21 of those distant cable folks. It all goes
22 into generating the percentages of everybody

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1 who would have viewed certain viewing
2 entities.

3 So the base really is truly
4 everybody in the U.S. with that large a
5 sample. But you need that large because of
6 the filters to take it down.

7 Once you get into that spot, it
8 would be not an impossible analysis but a
9 difficult one because you would have to go
10 into a secondary step that would say let's
11 now, instead of just looking for viewing to a
12 given station during a given time period, what
13 we would have to do is start computing cable
14 coverage to go what are the cable systems for
15 which each of these stations is then available
16 and how many homes do we have within those
17 stations that would be considered distant?

18 It's a step that we don't actually
19 need to do to process the data as we do it.
20 And, therefore, to estimate it would be kind
21 of, would be a separate full-custom study to
22 produce it. And, again, quite frankly, it

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1 wouldn't ultimately be the real key in terms
2 of sort of judging those sample sizes.

3 JUDGE FEDER: Is it possible that,
4 for some of these stations, after you apply
5 the filters, that there simply are no diary
6 measurements for those particular stations?

7 THE WITNESS: No. I mean, the
8 answer to that is that the sample sizes are
9 large enough that it would be virtually
10 impossible for any of those stations to not
11 have people who would be in a position of
12 being able to view that could have recorded
13 that viewing. The fact that they didn't is a
14 different issue, but it's not a case where,
15 for any of them, that people wouldn't have had
16 that ability. I mean, we measure all cable
17 systems across the U.S. You couldn't have any
18 kind of relatively large distribution of a
19 signal that, in fact, would not have the
20 capacity of being able to have somebody who
21 could have viewed it. It's a case of they
22 could have, but they didn't indicate it within

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1 the diary.

2 JUDGE FEDER: Thank you.

3 JUDGE STRICKLER: How many
4 stations were metered? I mean, excuse me, how
5 many meters were out in public in the United
6 States in the period 2000 to 2003, if you
7 know?

8 THE WITNESS: I don't know off the
9 top of my head.

10 JUDGE STRICKLER: Not even
11 ballpark?

12 THE WITNESS: I mean, if I had to
13 guess, I'd put the number probably at that
14 point in time as somewhere in a five to ten
15 thousand kind of range maybe. It expanded
16 greatly into the mid 2000s with the advent of
17 the Local People Meter and a shift that we
18 made then in terms of how we accumulated
19 households both locally and nationally. But
20 the sample sizes were substantially lower at
21 the time of this analysis.

22 JUDGE STRICKLER: Thank you.

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1 CHIEF JUDGE BARNETT: Just to ask
 2 you to say this for the third time, you
 3 distributed diaries to 100,000 households each
 4 of the four weeks --
 5 THE WITNESS: Twenty-five thousand
 6 during each week of the four weeks, so it's
 7 four independent samples of 25,000, roughly
 8 25,000 each.
 9 CHIEF JUDGE BARNETT: And they're
 10 not the same over those four weeks?
 11 THE WITNESS: That's correct. And
 12 then as you go through the sweeps, those are
 13 also not the same.
 14 CHIEF JUDGE BARNETT: Not the same
 15 between May and July?
 16 THE WITNESS: That's correct.
 17 CHIEF JUDGE BARNETT: Okay. Thank
 18 you.
 19 THE WITNESS: And that's an
 20 important thing because if they were the same
 21 homes then you'd run into situations of going
 22 is there, that's where you get into that idea

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1 of the number of unique people and whether
 2 it's the same folks who were viewing or not.
 3 The very fact that they're independent samples
 4 means that the potential is there for
 5 somebody, 8:00 on Monday with this particular
 6 station, that there would be no viewing. On
 7 the other hand, when you get into the
 8 following week at 8:00 on Monday, there may
 9 very well be because you've got an independent
 10 sample now that could. And then the following
 11 week there could be, which is, again, why you
 12 want to accumulate over time to accumulate
 13 those independent samples.
 14 BY MR. OLANIRAN:
 15 Q I just need to go back really
 16 quickly to just one question. Judge Feder
 17 asked you, I think he was referring to what
 18 happens when you go through the process of
 19 elimination, and I think you said that the
 20 sample goes down. And I just want to be sure
 21 that we're talking about the same thing. It's
 22 the sample of the households, correct?

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1 A That's correct.
 2 Q This is a national sample of
 3 households. And then there's a sample of
 4 station that you've been asked to study by
 5 MPAA, correct?
 6 A That is correct.
 7 Q And when you're going through your
 8 elimination process, that sample of stations
 9 does not shrink. It's the data, because of
 10 the elimination, the data that's contributing
 11 to your study that has been eliminated, not
 12 the number of samples, though, right?
 13 A That is correct.
 14 Q And the national sample, the
 15 sample of households, diary households, that
 16 doesn't change either. It's a question of
 17 whether or not there's reported or non-
 18 reported viewing within that sample; is that
 19 correct?
 20 A And, you know, technically,
 21 whether viewing by that household would be
 22 compensable or not so that you're saying if it

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1 wouldn't be, because it was local, then it is
 2 really counting as a zero. If it wouldn't be
 3 because it was non-cable or for whatever
 4 reasons, it wouldn't be included and it would
 5 be indicated again as zero.
 6 Q Now, going back to the issue of
 7 non-reported viewing, in your view, do the
 8 instances of non-reported viewing, did they
 9 invalidate the results of your study?
 10 A No. They're not only consistent,
 11 but it is given -- and I hate to keep going
 12 back to it but it is something to keep in mind
 13 again. The low levels of tuning at any given
 14 point in time, that it is a virtual
 15 statistical certainty that you would be having
 16 those types of zero cells. So it's not only
 17 that it invalidates or makes you feel that the
 18 data set is bad, it is something that, in
 19 fact, you know, can and should be expected
 20 under the circumstances.
 21 CHIEF JUDGE BARNETT: How much
 22 more do you have, Mr. Olaniran?

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1 MR. OLANIRAN: I have two more
2 questions.
3 CHIEF JUDGE BARNETT: All right.
4 Go ahead.
5 BY MR. OLANIRAN:
6 Q The other question I had was if
7 you looked at station X on a particular day at
8 a particular quarter hour and you looked at
9 all of the households contributing to viewing
10 on that station, and let's say they were all
11 zero, is there a way to tell whether or not
12 those households are watching -- actually, let
13 me strike that question but go back to the
14 same hypothetical. If you had station X, a
15 particular quarter hour on a particular day,
16 and let's say, for two households let's say
17 you had non-reported viewing to that station
18 for that particular quarter hour, would you
19 need to know whether or not, can you tell from
20 just that information whether those two
21 households were watching something else?
22 A No.

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1 Q Okay. And also, if I took station
2 X and I added up all of the instances of non-
3 zero, of non-reported viewing, what could I
4 infer from the tabulation of just the zeros on
5 that station?
6 A The important thing to keep in
7 mind with this type of question is if you
8 think about my analogy of saying each quarter
9 hour is a sampling point, that it is, in fact,
10 important to include all of the sampling
11 points in whatever type of analysis you're
12 choosing to do, whether, again, by time period
13 or program or station or however you're adding
14 it up, fundamentally, going through and
15 picking sampling points based upon the data
16 piece that's in there is, in fact,
17 fundamentally, a wrong thing to do and one
18 that doesn't mean anything. You would expect
19 cells to have zeros, but to pick only those
20 cells that have zeros, it is not the way to
21 look at it. It has to be accumulated and
22 added together in order to have the validity.

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1 MR. OLANIRAN: Okay. No further
2 questions, your Honor.
3 CHIEF JUDGE BARNETT: Thank you.
4 It is 4:36. We will be at recess until 9:00
5 in the morning. Thank you all, and we will,
6 I will -- Judge Feder has all of his documents
7 on his iPad. Isn't he special? Judge
8 Strickler schlepped all of his over here, and
9 I schlepped mine over and left them in the
10 room. So I'll bring mind out tomorrow. We'll
11 be all set with regard to paper, and we'll see
12 you at 9:00 in the morning. Thank you.
13 (Whereupon, the foregoing matter
14 was concluded at 4:36 p.m.)
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18
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21
22

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: :
DISTRIBUTION OF 2000, :No. 2008-02
2002, 2003 CABLE :
ROYALTY FUNDS :CD 2000-03
:Phase II
:

Tuesday,
June 4, 2013

Fourth Floor Hearing Room
Madison Building
Library of Congress
101 Independence Avenue, SE
Washington, DC

The above-entitled matter came on for
hearing, pursuant to notice, at 9:00 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT,
Chief Judge
THE HONORABLE JESSE FEDER
THE HONORABLE DAVID STRICKLER

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1 P-R-O-C-E-E-D-I-N-G-S
2 9:03 A.M.
3 CHIEF JUDGE BARNETT: We are back
4 on the record in the matter of the
5 distribution of cable royalty funds for the
6 years 2000-2003, Phase II.
7 And Mr. Olaniran, had you
8 completed your examination of your client, of
9 your witness?
10 MR. OLANIRAN: Yes, Your Honor.
11 CHIEF JUDGE BARNETT: Okay, thank
12 you.
13 Mr. Boydston.
14 MR. BOYDSTON: Thank you, Your
15 Honor.
16 CROSS EXAMINATION
17 BY MR. BOYDSTON:
18 Q Good morning, Mr. Lindstrom.
19 A Good morning.
20 Q My name is Brian Boydston. I'm
21 the attorney for Independent Producers Group.
22 You've testified that you provided Nielsen

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1 diary data to the MPAA in connection with this
2 proceeding, correct?

3 A That is correct.

4 Q And that that information
5 constituted diary information for the four
6 sweeps weeks during each of the relevant four
7 years, correct?

8 A Including March and October in
9 some instances as well.

10 Q Understood, thank you. Now I just
11 want to confirm, I think you may have
12 mentioned in your direct testimony, but I
13 don't know if it quite made this clear. It
14 seems an obvious point, but these ratings
15 data, they don't reflect actual viewing by the
16 population that they're serving. They
17 represent viewing based on discrete numbers of
18 people within the population being surveyed,
19 correct?

20 A If I understand the question
21 correctly, it is a sample that is being
22 measured rather than the full census

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1 population.

2 Q And so for instance, when there's
3 a diary entry for a particular program at a
4 particular time, one diary entry may be
5 extrapolated on to a number of additional
6 households, correct?

7 A That is correct.

8 Q Sometimes maybe it could be as
9 much as 10,000, maybe more, maybe less
10 households?

11 A Ten thousand would be high in
12 terms of those weights, but it possibly could
13 go that high. It's probably more in the range
14 of a thousand for the most part.

15 Q And I understand that you've
16 appeared in these proceedings for quite some
17 time, decades?

18 A That's correct.

19 Q And you appeared on behalf of the
20 MPAA in the 1997 proceedings that took place
21 in the Year 2001, correct?

22 A That is correct.

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1 Q Are you familiar with the
2 September 2001 distribution order that came
3 out of those 1997 proceedings?

4 A I don't recall the details.

5 Q Have you reviewed it at some time
6 though?

7 A I'm sure that I have, but I don't
8 recall when I did though.

9 Q Fair enough. Do you recall that
10 in that decision on the '97 proceedings the
11 CARP referenced a high incidence of zero
12 viewing in the Nielsen diary data?

13 A Yes, I do.

14 Q And do you recall that in the '97
15 proceedings it was found that the aggregate
16 zero viewing equaled 73 percent of all major
17 broadcasts?

18 A I don't recall the details of it.

19 Q Would that figure of 73 percent
20 surprise you or does that seem out of whack?

21 A No, it's actually very much in
22 line that even with the people meter that

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1 currently is the source of what's done for a
2 \$70 billion advertising business, that if you
3 dive into it that there's approximately 65
4 percent of the quarter hours would, in fact,
5 be zero viewing for stations. Now obviously,
6 that's in direct relationship to the size of
7 the audience to those stations, some more,
8 some less. But that is not inconsistent with
9 what's currently out there in the standard
10 audience measurement.

11 Q You mentioned, in your answer
12 right now, you mentioned metered ratings,
13 correct?

14 A That is correct.

15 Q And I assume you're talking on a
16 national level in your previous comment?

17 A Yes, I was.

18 Q On a national level would one see
19 that sort of incidence of zero viewing for
20 diaries as opposed to metered ratings?

21 A Again, it would be consistent
22 across meters and diaries. It would not be

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1 surprising to see those types of levels. And
2 again, in direct relationship to the size of
3 the station that's trying to be measured. And
4 we try and be very inclusive for all stations
5 and therefore there are a lot with very small
6 viewing levels.

7 Q From your testimony yesterday, my
8 recollection is that you were saying that the
9 diary ratings or the ratings derived from
10 diaries, there are many more diaries and much
11 more diary data that Nielsen collects than
12 metered data, correct?

13 A There are more sample households
14 that are being measured. The extent of the
15 data that's being collected, because the meter
16 is 365 days a year, is very extensive, so I
17 wouldn't phrase it that way. But there are
18 certainly much larger sample sizes with the
19 diary.

20 Q In terms of number of households
21 covered, my understanding from your testimony
22 was that the diaries are much greater than the

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1 meters?

2 A That is correct.

3 Q On what kind of a scale?

4 A I don't know exactly what the
5 metered sample was at the time, but I would
6 estimate maybe 5,000 or 10,000 during that
7 period of time. Currently, right now,
8 nationally, it's 25,000. And the diary itself
9 is about 25,000 per week within independent
10 samples so that we're measuring about 400,000
11 plus households a year with the diary.

12 Q So at the time in question, 2002,
13 2003, your estimate, just refresh my
14 recollection, your estimate at that time is
15 that there must have been a couple hundred
16 thousand diary households and what did you
17 say, 25,000 meters?

18 A No, it's 25,000 now. It might be
19 5,000 or 10,000. I honestly don't recall.

20 Q So there could be as much as a 40
21 to 1 ratio during this time period of diaries
22 to meters or maybe greater?

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1 A That's correct.

2 Q Okay. Now isn't it true that the
3 September 2001 order on the '97 proceedings
4 directed the MPAA to decrease the incidence of
5 zero viewing in its study if it was going to
6 use such Nielsen data in the future?

7 A I don't recall.

8 Q Let me ask you to take a look at
9 what's been marked as Exhibit 7 in the
10 document in front of you there which is the
11 testimony of Raul Galaz in rebuttal to the
12 direct statement of MPAA-represented program
13 suppliers and that's Exhibit 7 to the Galaz
14 testimony in rebuttal to the MPAA.

15 A Exhibit 7?

16 Q Yes. And you can go past that
17 page that just says Exhibit 7. I'll represent
18 to you that this is a printout of one of the
19 Nielsen data, raw data files that was provided
20 to IPG in this matter. And if you could just
21 look at the first page or so. Does this look
22 like, does the data that's represented here

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1 look like Nielsen diary data to you?

2 A Yes, it does.

3 Q And my understanding is these are
4 supposed to be representing 16 weeks of
5 television viewing, correct?

6 A If it's 2003, I would -- I would
7 assume, but I'm not completely sure.

8 Q Okay, part of the reason for my
9 inquiry here is that in terms of -- well, do
10 you see -- it's about the fourth column over.
11 It's entitled zero viewing instances, no, no.
12 It's the next one, aggregate instances.

13 My understanding is those figures
14 under aggregate instances, the first of which
15 is 13,440, that these are the number of
16 quarter hour time periods measured in these
17 different entries. Is that correct?

18 A That would be my interpretation.

19 Q Now I'm going to have to do a
20 little math here because I want to try and
21 figure out how many quarter hours are in a
22 week. And -- excuse me, how many quarter-hour

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1 time periods are in a 16-week sweeps sample.
 2 And my calculation is that there are 4 quarter
 3 hours in every hour, multiplied by 24 hours in
 4 a day, multiplied by 7 days in a week,
 5 multiplied by 16 weeks gives a product of
 6 10,752. And we can do it on our calculators.
 7 Does that sound right to you?

8 A The math as you were running
 9 through, I didn't follow and multiply it out
 10 to the 10,000.

11 Q Should we do that very quickly?
 12 Would you mind doing that very quickly just to
 13 confirm that? I can give you a paper and
 14 pencil or do you have the ability to do it in
 15 your head?

16 So it was 4 quarter hours times 24
 17 hours in a day times 7 days a week times 16
 18 weeks.

19 A Somewhere around 11,000 or so.

20 Q The figure I had was 10,752. Now
 21 as I look back at Exhibit 7, under the
 22 aggregate instances which is listing the

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1 would end up adding a considerable degree of
 2 quarter hours to that.

3 Q Right. It just seems from the
 4 mathematical standpoint there may be some time
 5 even in addition to those two months, would
 6 you agree? Because two months would be an
 7 additional 8 weeks, because 8 plus 16 would be
 8 24. And as I say, the second entry represents
 9 32 weeks of quarter hour periods, so it seems
 10 that there must be some additional data coming
 11 into these beyond just the regular sweeps
 12 weeks, the additional two months of October
 13 and May. Do you know where that other time is
 14 coming from?

15 MR. OLANIRAN: Your Honor, I'd
 16 like to object to Mr. Boydston's line of
 17 questioning.
 18 Mr. Boydston is actually implying that this
 19 data that we're looking at is in fact the raw
 20 data that Nielsen provided to IPG. In fact,
 21 it is not. This is an analysis that was
 22 prepared, I suppose, by Mr. Galaz, or someone

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1 number of quarter hour time periods, what I
 2 see are numbers generally in excess of that,
 3 some close to double that or in fact, exactly
 4 double that such as the second entry at
 5 21,504. Now it would appear to me that that
 6 means that on that second entry of WTBS that
 7 appears on the first page of Exhibit 7 that
 8 that would mean that actually what was being
 9 presented here in this raw data was more than
 10 16 weeks of information, more like 32 weeks.
 11 Is that a reasonable conclusion?

12 A The aggregate number of quarter
 13 hours, yes.

14 Q And as I said if one looks down
 15 many of these, almost all of them seem to be
 16 in excess of 10,752. My conclusion from that
 17 was that while this data was aimed at
 18 providing 16 weeks of data, it actually
 19 provides a bit more than that. Is that a
 20 reasonable conclusion?

21 A It is including the additional
 22 measurement periods of March and October which

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1 at IPG. For the purpose of this proceeding,
 2 Nielsen does not, for example, if you look at
 3 the last column, does not do zero viewing
 4 instances in its raw data.

5 This is not the data or the format
 6 in which you will find the Nielsen data. So -
 7 -

8 MR. BOYDSTON: That contradicts
 9 his testimony so far. His testimony was that
 10 these numbers for minutes were what I asked
 11 him they are.

12 MR. OLANIRAN: These are not the
 13 raw data that was produced to IPG. You can
 14 direct the question to Mr. Lindstrom to see
 15 whether or not Nielsen calculates zero viewing
 16 instances. I'm pretty certain they don't.

17 MR. BOYDSTON: I haven't asked
 18 about that.

19 MR. OLANIRAN: You referred to
 20 these as raw data in your line of questioning
 21 and I just want to make sure we're clear about
 22 that.

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1 CHIEF JUDGE BARNETT: The witness
2 has already accepted this and has answered
3 questions about it. You can cross examine,
4 Mr. Olaniran.

5 BY MR. BOYDSTON:

6 Q Do you know where these additional
7 minute quarter hour periods could have come
8 from? As I said, you clarified and you had
9 already testified that in addition to the 16
10 sweeps, there's oftentimes time for May and
11 October. But it seems like there's even more
12 in some of these entries and I'm just
13 wondering if you have knowledge as to where
14 the other minutes come from?

15 A Again, I'm not sure where all the
16 aggregates are being built up to, but there
17 are many instances where that could end up
18 occurring.

19 Q Okay. Have you performed an
20 analysis yourself in order to determine the
21 existence of zero viewing in the raw Nielsen
22 data?

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1 A I personally have not.

2 Q Has someone at Nielsen done that
3 as far as you know?

4 A Not that I know of.

5 Q Do you know of anyone else who has
6 done that?

7 A Not in terms of specifically
8 looking at that aspect that I recall.

9 Q My follow-up questions were
10 because
11 -- and I asked you and you said "I personally
12 haven't" which implied to me that maybe you
13 knew that someone else had. That was all.
14 But you don't know of anyone else that has
15 done that?

16 A I can only answer for myself in
17 this case.

18 Q Okay. Is --

19 JUDGE STRICKLER: Excuse me,
20 counsel. I didn't mean to step on your words.
21 May I ask him a question to follow up?

22 MR. BOYDSTON: Absolutely.

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1 JUDGE STRICKLER: One of your
2 answers before, Mr. Lindstrom, was that you
3 understood that there were other reasons why
4 the aggregates would total more than the
5 additional two months. Counsel didn't ask you
6 what those other instances would be that would
7 account for that. Can you tell us what those
8 other instances would be?

9 THE WITNESS: There could be
10 situations like with GN. GN, there's actually
11 two separate feeds that are going on, one of
12 which is the local GN. The other is the
13 satellite feed of GN which has in some cases
14 different programming. It's possible if
15 somebody were looking at the data, they would
16 aggregate up each signal individually for the
17 quarter hours and then put them together.

18 JUDGE STRICKLER: Sort of a double
19 count on the WGN numbers, is that what you're
20 saying?

21 THE WITNESS: Potentially that's
22 one way of thinking about it, but again, I'm

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1 not sure what are the occurrences in terms of
2 how this is built up. What I had been
3 answering originally was going this looks to
4 be consistent with the type of data that would
5 come out from what we were producing, but I'm
6 not sure where the 21,000 directly were coming
7 from.

8 JUDGE STRICKLER: And you said
9 there were instances that you could imagine as
10 to why it would be that you have the aggregate
11 totalling more than the additional two months
12 and you just gave the WGN example. Any other
13 instances or is that all that you can recall?

14 THE WITNESS: That would be the
15 one that -- that type of situation would be
16 the one that would be most likely to come to
17 mine.

18 JUDGE STRICKLER: Anything else?

19 THE WITNESS: Not that I can think
20 offhand.

21 JUDGE STRICKLER: Thank you.

22 Please proceed.

1 MR. BOYDSTON: Thank you.
 2 BY MR. BOYDSTON:
 3 Q Have you reviewed the rebuttal
 4 testimony of Raul Galaz in this matter?
 5 A Very briefly.
 6 Q Have you reviewed the rebuttal
 7 testimony of Dr. Laura Robinson in this
 8 matter?
 9 A No, I haven't.
 10 Q Based upon your review of Mr.
 11 Galaz' rebuttal testimony, do you have any
 12 disagreement that for this time period, 2000,
 13 2003 the Nielsen diary data aggregate zero
 14 viewing was between 78 percent and 82 percent
 15 depending upon the year?
 16 A I have no reason to disbelieve
 17 that.
 18 Q Do you have any reason to disagree
 19 that the range of zero viewing for stations in
 20 the MPAA viewer study was between less than 1
 21 percent and 99.9 percent zero viewing
 22 instances?

1 A I have no reason to believe that
 2 would not be the case.
 3 Q Thank you. Now is it accurate
 4 that some of the station data that was
 5 provided by Nielsen to the MPAA included
 6 stations that showed 100 percent zero viewing
 7 for the selected stations?
 8 A I could not say one way or another
 9 for sure on that.
 10 Q Meaning you don't have any
 11 recollection as to whether that occurred?
 12 A I do not have a recollection as to
 13 that specific.
 14 Q Have you seen that instance before
 15 in Nielsen data?
 16 A I haven't looked for that
 17 specifically. It would not be, again,
 18 inconsistent if it were a station with very,
 19 very low viewing levels, again, keeping in
 20 mind that the base population that we're
 21 looking is somewhere in the neighborhood of
 22 100 million households. In many of these

1 instances, we could be looking for viewing
 2 that are at levels of a 1,000 during any given
 3 quarter hour. It takes a lot in order to find
 4 those which is why you need substantial sample
 5 sizes, but any given quarter hour only has
 6 25,000 as the base sample. That's why in
 7 order to analyze that data, it really is
 8 imperative to aggregate is across time. Zero
 9 viewing is the specific quarter hours for
 10 which the sample sizes would be relatively low
 11 comparatively. And it really is necessary to
 12 aggregate across.
 13 Q And the difficulty in doing that
 14 results in the incidence of zero viewing that
 15 we see, correct?
 16 A Because individual quarter hours
 17 will be going against approximately a 25,000
 18 sample size.
 19 Q Right, if it was a 25 million
 20 sample size, that would probably be a
 21 different story, correct?
 22 A Well, if it were two weeks, then

1 it would be 50,000; in 3 weeks, 75,000 and up
 2 to the 400,000 plus, it's just the individual
 3 quarter hours to look for zero viewing is
 4 again not the purposes for which the study was
 5 designed or terribly surprising when focusing
 6 on that micro level.
 7 Q And that's the issue is that when
 8 focusing on that micro level, this particular
 9 study has its limitations, correct?
 10 A If one were trying to decide on
 11 the audience for an individual quarter hour on
 12 a low-rated station, there would be high
 13 relative errors.
 14 Q Correct, which makes it kind of a
 15 tough yardstick to use for this, doesn't it?
 16 A No. Because the whole purpose is
 17 to aggregate programs across time. To
 18 aggregate across days on strip programming, to
 19 go across weeks and as those accumulate,
 20 you're accumulating sample sizes which is the
 21 way you eliminate a zero viewing issue. It's
 22 the way that it works even in the example of

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1 the people meter that I discussed of going
2 becomes an acceptable measure because, in
3 fact, you aggregate across time.

4 Q Now the figures I mentioned a
5 minute ago, in the '97 proceedings, there were
6 73 percent zero viewing in the raw Nielsen
7 data and of these proceedings on these years
8 it's between 78 and 82. Based on those simple
9 numbers, it seems clear that in this study for
10 these years, the incidence of zero viewing is
11 certainly higher, isn't it? I mean it's 82
12 percent versus 73 percent on the high end,
13 correct?

14 A But at the same time I think it's
15 imperative to go. It's not 80 percent of the
16 programs, in fact, have zero viewing. And so
17 that all that that might tell you in terms of
18 a decline or an increase rather and the degree
19 of zero viewing would suggest that there is
20 probably more fragmentation in the marketplace
21 that would cause distant signals to perhaps
22 have slightly less viewing. That is really

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1 the main conclusion that you can draw from
2 that type of data set.

3 JUDGE STRICKLER: I have a
4 question for you about the zero viewing
5 quarter hour segments. You said as the sample
6 gets larger, you tend to correct for that.
7 Does Nielsen know whether or not the quarter
8 hours for the survey for one week which is a
9 zero, whether or not the zero repeats for that
10 same quarter hour for that same low-rated show
11 in the next survey and then survey and the
12 next survey or are these zeros all across the
13 low-rated shows and you don't figure out which
14 is which?

15 THE WITNESS: No, well, we don't
16 take that step in the analysis. That's done
17 further down the line. But that's sort of the
18 way that this works is the idea that you may
19 have a zero in Week 1, but when you go to that
20 time period in that program in Week 2 and
21 you're adding them in together that you are
22 going to have a much greater likelihood that

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1 you will find viewing in subsequent airings.
2 And we're not producing the data specifically
3 in the type of analysis that you're speaking
4 to other than the end product as I understand
5 it is ultimately an aggregation by program
6 across time which is where you do end up sort
7 of adding in the subsequent viewing. And you
8 would not have anywhere near 80 percent of the
9 programs with no viewing.

10 JUDGE STRICKLER: Yes, so when we
11 see 80 percent zero viewing, we're not saying
12 -- let me ask it this way, is that statistic
13 showing that a particular show, a low-rated
14 show, we'll call it Watching Paint Dry, a low-
15 rated show. It's not zero every time, every
16 quarter hour.

17 THE WITNESS: No.

18 JUDGE STRICKLER: Those 80 percent
19 zeros could be Watching Paint Dry, Watching
20 Grass Grow, two different shows.

21 THE WITNESS: Right. And if it
22 turned out that it was on five days a week and

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1 three days nobody watched it, not nobody
2 watched it, but no viewing was recorded and in
3 the fourth and fifth day there was viewing
4 that was recorded, it would still show under
5 that scenario 65 percent zero viewing. But
6 the accumulated viewing across the five days
7 would be a fairly accurate or a reasonably
8 accurate reflection. And as you went across
9 weeks so that you have independent samples
10 adding to it, it will be a better and better
11 number the more weeks and sweeps that are
12 being combined.

13 BY MR. BOYDSTON:

14 Q Now isn't it true there are
15 instances of zero viewing and not just for
16 quote unquote small shows or small stations,
17 but even big stations as well, is it not true
18 that for instance WGN by far and away the
19 largest station that's distantly retransmitted
20 has what I would call anyway a high incidence
21 of zero viewing in excess of 50 percent.
22 Isn't that true?

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1 A I don't know the specifics for GN
2 and there are two reasons why that could
3 happen. But first off, keep in mind as we've
4 tried to stress broadcast stations at this
5 point in time would almost be happy with one
6 and two rating levels. You're dealing with
7 small percentages and for cable viewing you're
8 dealing with tenths of a percent as your
9 typical rating level. So that even well
10 distributed, well viewed networks are likely
11 in the grand scheme of things to have
12 relatively low viewing levels at any given
13 point in time.

14 Q Isn't it true, you mentioned
15 earlier you said well, it's not like we have
16 80 percent of programs with zero viewing, do
17 you have an estimate as to what the percentage
18 of programs are out there that have zero
19 viewing instances?

20 A No, I do not.

21 MR. BOYDSTON: Your Honor, I'd
22 like to mark Exhibit 504. It's a one-page

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1 document. They are sticking together.
2 (Whereupon, the above-referred to
3 document was marked as Exhibit 504
4 for identification.)

5 BY MR. BOYDSTON:

6 Q Now this is a document which I've
7 only marked at the moment. It hasn't been
8 admitted and I haven't moved for it to be
9 admitted just yet. I'll represent to you this
10 is a document that has been generated by IPG
11 based upon analysis of the raw Nielsen diary
12 data and it reflects here that for the Year
13 2000 out of 8,173 unique programs we have
14 incidents of aggregate zero viewing of 42.65
15 percent. Do you have any reason to believe
16 that that would be inaccurate?

17 A I have no reason to believe it is
18 accurate either. And that's not question it.
19 It's just simply I don't have the base
20 information to be able to say.

21 Q Okay.

22 JUDGE STRICKLER: Counsel, just so

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1 you can clarify so I understand the questions
2 and the answers here. That final column,
3 percentage of programs with aggregate zero
4 viewing, does that mean as far as you're
5 representing percentage of programs with any
6 aggregate zero viewing or total aggregate zero
7 viewing?

8 MR. BOYDSTON: Any.

9 JUDGE STRICKLER: Thank you.

10 MR. BOYDSTON: Total is a story
11 for another day.

12 JUDGE STRICKLER: Fair enough.

13 BY MR. BOYDSTON:

14 Q Let me ask you to turn to Exhibit
15 8 in the document you have there in front of
16 you. I'm sorry, Your Honors, it's just the
17 next exhibit in that same document we were
18 looking at.

19 CHIEF JUDGE BARNETT: Exhibit 8 to
20 the Galaz rebuttal testimony to MPAA?

21 MR. BOYDSTON: And actually,
22 belatedly, I'd like to move admit Exhibit 7.

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1 MR. OLANIRAN: Objection, Your
2 Honor, on the same basis that I made before.
3 Mr. Lindstrom cannot authenticate this
4 document and while he answered questions about
5 it, I think his answers were more in a general
6 form, not specific to the document.

7 MR. BOYDSTON: The witness
8 acknowledged that this appeared to be
9 information that did come straight from the
10 Nielsen raw data. That's the purpose for
11 which it's being admitted.

12 MR. OLANIRAN: Your Honor, this
13 information did not -- it may have come from
14 the Nielsen data, but this is not information
15 Nielsen prepared. The only information
16 Nielsen provided with respect to the diary is
17 the raw data. This is not the raw data.
18 Nielsen does not calculate zero viewing
19 instances and Mr. Lindstrom's testimony has
20 been very consistent with that.

21 I think you can attempt to put
22 this in with the witness that sponsored this,

1 but I'm quite sure that Mr. Nielsen did not
2 prepare this document.
3 CHIEF JUDGE BARNETT: The
4 objection is sustained. Exhibit 7 to the
5 rebuttal testimony is rejected.
6 MR. BOYDSTON: Not admitted.
7 CHIEF JUDGE BARNETT: Not
8 admitted.
9 (Laughter.)
10 MR. BOYDSTON: Thank you.
11 CHIEF JUDGE BARNETT: I know
12 you'll make another stab at it, Mr. Boydston.
13 MR. BOYDSTON: I appreciate that.
14 Thank you.
15 MR. HARRINGTON: Your Honor, if I
16 could be heard for a second?
17 CHIEF JUDGE BARNETT: You may.
18 MR. HARRINGTON: I note we didn't
19 state a position on this, but the fact is
20 we've never received this document. We
21 haven't received any of the proposed exhibits
22 that IPG has exchanged regarding MPAA. And if

1 we're going to have a meaningful involvement,
2 we would like to be provided with a copy of
3 the exhibits that are going to be proposed for
4 entry in this case.
5 MR. BOYDSTON: Your Honor, this is
6 not the case against SDC. I'm not talking to
7 an SDC witness.
8 CHIEF JUDGE BARNETT: Mr.
9 Boydston, I thought we had made it clear that
10 all documents were to be provided to all
11 parties and so to the extent that you have not
12 provided MPAA to Mr. Harrington or SDC
13 documents to Mr. Olaniran, you need to do
14 that.
15 MR. BOYDSTON: All right. I mean
16 the only reason we haven't is as I said --
17 CHIEF JUDGE BARNETT: I understand
18 your point, but you need to understand ours.
19 MR. BOYDSTON: Okay.
20 BY MR. BOYDSTON:
21 Q With regard to Exhibit 8, do you
22 recognize this exhibit as containing

1 information from the raw Nielsen data?
2 A I recognize that it contains data
3 that wouldn't have been there as well, given
4 some of my perhaps speculation on the last
5 one, I think I need to avoid this one. We
6 didn't do data that was connected with the
7 application of the program names.
8 Q Okay, are you referring to field
9 three there?
10 A Yes, which seems to be a key
11 component of the data set.
12 Q Is there anything else in this
13 that you would add to that field three in your
14 answer?
15 A I am not sure what the rest of the
16 fields are either, but I do know that, in
17 fact, the program name data we did not get
18 involved with.
19 Q Okay, the field at the far right,
20 do you have a recognition of what that is,
21 based upon what the raw Nielsen data is?
22 A I'm not sure offhand. I could

1 speculate.
2 Q What's your speculation?
3 A Actually, I'm not completely sure.
4 CHIEF JUDGE BARNETT: We're not
5 going to ask witnesses to speculate.
6 MR. BOYDSTON: He said I could
7 speculate. That's why I followed up.
8 CHIEF JUDGE BARNETT: Could, but
9 he's not allowed to.
10 MR. BOYDSTON: Fair enough.
11 BY MR. BOYDSTON:
12 Q Let me ask you to look back at
13 Exhibit 7 and do you see stations on the left
14 hand side of that document that based upon
15 your experience you would believe were
16 probably independent stations as opposed to
17 network stations?
18 A Yes.
19 Q And do you see that those
20 independent stations and I realize that this
21 is something that did not come from Nielsen,
22 but they show an incidence of zero viewing on

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1 the far right hand corner, at least as
2 represented in this document?
3 A Yes.
4 Q Do you have any reason to believe
5 that there would be a difference between zero
6 viewing of an independent station and a
7 network station?
8 A There could be differences,
9 depending on how this was calculated.
10 Q Just based upon what you see here,
11 do you see that or do you believe that
12 network-affiliated stations have a higher
13 incidence of zero viewing than network
14 stations?
15 A I'm not familiar with all the
16 stations. I couldn't divvy them up in my
17 mind.
18 Q Okay, let me ask the question just
19 a little different way. In general, is it
20 your belief that network-affiliated stations
21 would have a different, fundamentally
22 different zero viewing incidents than network

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1 stations?
2 A The main reason why there would be
3 a difference depending on how the calculations
4 were done or whether or not the quarter hours
5 with compensable programming were handled
6 before the analysis was done or not, so that
7 the network feeds would have been potentially
8 stricken which would end up with a zero
9 viewing cell.
10 We didn't do the program names
11 associated with that so those instances
12 should, in fact, come up with zeroes. I don't
13 know whether they were within this analysis.
14 The second thing is is that, and
15 it's a very broad type of statement and so it
16 is going to vary piece by piece within this is
17 that network programs will often have higher
18 ratings which, in fact, may or may not lead to
19 differences in the zero viewing cells, but
20 it's difficult to say. I don't think there's
21 -- you could necessarily make too general a
22 statement on that.

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1 Q I don't know if it's in front of
2 you there or not, but I think I can ask a
3 question and you can answer it without it in
4 front of you. If not, let me know. What I'm
5 referring to is your statement that you talked
6 about yesterday and you provided several
7 changes in your statement, as of yesterday, do
8 you recall that?
9 A I do.
10 Q And particularly on page six of
11 your testimony, you changed the references a
12 couple of times from the MPAA analysis, or
13 excuse me, the Nielsen custom analysis to Dr.
14 Gray's custom analysis. Do you recall that?
15 A Yes, I do.
16 Q When you refer to Dr. Gray's
17 custom analysis, what exactly is it you're
18 referring to?
19 A I'm referring to an analysis
20 that's downstream from the work that Nielsen
21 did. We produced quarter hours, estimates of
22 quarter hours of viewing for distant cable

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1 households among individual stations on a
2 quarter hour basis. And down the line from
3 that point in time, program names were affixed
4 to it and the analysis was completed.
5 And so it was a case of saying in
6 this case the analysis piece would have been
7 further down the line from the work that we
8 were producing.
9 Q So if you could be more specific,
10 what was the work that Dr. Gray did that you
11 are encompassing in your phrase, "Dr. Gray's
12 analysis"?
13 MR. OLANIRAN: Objection, Your
14 Honor. I think Mr. Lindstrom is not qualified
15 to testify what Dr. Gray did. If he wants to
16 know what Dr. Gray did he can ask him.
17 MR. BOYDSTON: He's changed his
18 analysis to say that what he's talking about
19 is Dr. Gray's analysis which certainly implies
20 that he knows something about Dr. Gray's
21 analysis, otherwise why would he say it?
22 CHIEF JUDGE BARNETT: I'll allow

Page 405

1 the question. He used the terminology in his
2 testimony.

3 THE WITNESS: The piece that the
4 adjustment had been made for was the notation
5 regarding two aspects of zero viewing, one of
6 which was taking out, in fact, the broadcast
7 network; viewing quarter hours that would not
8 have been compensable. We are producing
9 viewing data for all stations for all quarter
10 hours without trying to program name, so that
11 step within the process to take out
12 noncompensable quarter hours would have been
13 done further on and would have been part of --
14 included within Dr. Gray's analysis. And the
15 same with GN, where comparisons were necessary
16 in order to determine which quarter hours
17 should be included or not having to do with
18 the comparison of the national satellite feed
19 versus the local feed and where there are
20 differences.

21 BY MR. BOYDSTON:

22 Q So are you saying that after

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1 further downstream from the work that we were
2 doing.

3 Q And how do you know that?

4 A Because we didn't do it.

5 Q Well, how do you know it was done
6 in the first place then?

7 A It is my understanding that it's
8 done. I couldn't sit and tell you the details
9 of how I know that.

10 Q Well, you say that you know it,
11 something must have made you know it?

12 A I would say that -- I may have
13 overstepped my statement in too strong a way.
14 And in fact, I would requalify that as saying
15 I, in fact, have -- I have no positive
16 confirmation to say one way or another that it
17 was done. I only can speak to the data set
18 that we provided which is again, the estimates
19 of the audience on a distant cable basis on a
20 station by station.

21 Q I'm sorry, I beg your pardon. The
22 data set you produced did include

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1 Nielsen provided the raw data to Dr. Gray
2 which included things like noncompensable
3 programming, network programming, if you will,
4 that after that, Dr. Gray removed that
5 noncompensable programming from the data set
6 you received from Nielsen and then did
7 something with it?

8 A We provided our data to the MPAA
9 which was then gone on to Dr. Gray, but it is,
10 in fact, my understanding that that was done
11 in between Nielsen's work on the estimates of
12 the audience and Dr. Gray's final analysis.

13 Q And how do you know that?

14 A It is my understanding that that
15 is part of Dr. Gray's analysis.

16 Q What's the basis for that
17 understanding?

18 A I cannot speak with full expertise
19 on the details of Dr. Gray's analysis, so --

20 Q Well, do you know if it was Dr.
21 Gray who did that or some other person?

22 A I only know that it was done

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1 noncompensable programming, correct?

2 A It would because we wouldn't have
3 gone through to identify the program level
4 data. It has to be done once the program
5 schedules are affixed.

6 Q And noncompensable programming
7 includes, for instance, network programming,
8 correct?

9 A I'm probably best not commenting
10 on that because I didn't get involved with
11 that aspect of it.

12 Q Well, are you aware as to whether
13 or not network programming is compensable in
14 these matters?

15 A I am aware, but not to the extent
16 of being able to answer on details on it. To
17 a certain extent, you could almost go into a
18 speculation mode. It doesn't affect what we
19 produced and as I said, I may have made a
20 stronger statement before than perhaps I
21 should have.

22 Q Now you said yesterday in your

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1 testimony that zero viewing is a misnomer in
 2 the sense that when Nielsen data shows zero
 3 viewing Nielsen isn't really saying no one is
 4 watching, correct?
 5 A Other than for analysis purposes
 6 where we're putting numeric fields in, Nielsen
 7 doesn't show zero viewing.
 8 Q But I think your point was and
 9 forgive me if I'm wrong, but your words
 10 yesterday I believe were just because you have
 11 something that shows no viewing under the
 12 Nielsen data, doesn't mean that no one is
 13 actually watching at that time, correct? It
 14 just means that the Nielsen method did not
 15 pick that up?
 16 A That the levels would likely have
 17 been too small to have found reported viewing.
 18 Yes.
 19 Q And again, this may be asking you
 20 to be overstepping your bounds and if not, I'm
 21 sure you'll avoid that. Isn't it the case
 22 that MPAA study accords no value to programs

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1 that have a zero viewing incidence?
 2 A That's not true.
 3 Q And why is that not true?
 4 A Once again, it's important to keep
 5 in mind sampling in the way that it works so
 6 that during any individual quarter hour you
 7 may or may not find viewing in the same way
 8 that for any given respondent it might be a
 9 yes or a no in terms of have they viewed. You
 10 would expect that to occur. But it's only
 11 once you only add up all of the aggravated
 12 viewing that, in fact, your estimate is
 13 accurate.
 14 And so it's a situation that it
 15 really is necessary to add up the viewing
 16 across time.
 17 Q Yes, but to the extent that the
 18 MPAA study accords no royalty rights or no
 19 right to actually get paid royalties out of
 20 this proceeding to a program that shows up
 21 with a zero viewing on the Nielsen data, is it
 22 not true that zero viewing in the Nielsen data

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1 translates to no value in these proceedings?
 2 MR. OLANIRAN: Objection, Your
 3 Honor. Mr. Lindstrom is not testifying what
 4 MPAA's distribution methodology or what MPAA's
 5 methodology is in this proceeding. He's
 6 testifying to what Nielsen produced to MPAA.
 7 CHIEF JUDGE BARNETT: Sustained.
 8 And let's keep our objections to the statement
 9 of the legal basis for the objection, please,
 10 not a narrative. Objection sustained.
 11 BY MR. BOYDSTON:
 12 Q Do you have an understanding of
 13 how the MPAA study accords shares of these
 14 royalty pools to individual program suppliers?
 15 A To the extent that my knowledge
 16 goes and it is again and a step further
 17 downstream than what we do, but it examines
 18 programs and examines programs across time and
 19 across stations in a very aggravated way.
 20 And under that scenario, instances
 21 with multiple stations and multiple time
 22 periods coming up with zero viewing are going

Page 412

1 to be certainly the exception to that rule.
 2 It's why again you have to keep aggregating
 3 and a zero for a given quarter hour, as we
 4 keep going back to it, zero viewing for a
 5 given quarter hour doesn't mean anything. It
 6 is only in that aggregation. And to the best
 7 of my knowledge of what the MPAA does, I think
 8 it's a fair representation of the relative
 9 amount of viewing going to those programmings
 10 across times and station.
 11 Q Do you think it's a fair and
 12 relative representation if the MPAA
 13 methodology accords no compensation whatsoever
 14 for a program that, in fact, does have
 15 viewership?
 16 MR. OLANIRAN: Objection,
 17 relevance, Your Honor.
 18 CHIEF JUDGE BARNETT: Sustained.
 19 THE WITNESS: Can you rephrase
 20 that?
 21 CHIEF JUDGE BARNETT: You don't
 22 have to answer.

Page 413

1 THE WITNESS: I'm sorry, I thought
2 you were saying go ahead with it.

3 CHIEF JUDGE BARNETT: I used to
4 confuse those two all the time myself.

5 (Laughter.)

6 BY MR. BOYDSTON:

7 Q Would you as an expert normally
8 provide relative error rates as part of your
9 report?

10 A It's actually a difficult question
11 to answer. It's something that will often be
12 provided if it's asked for in terms of
13 syndicated data. It's frequently done. In
14 situations like this one, relative errors are
15 exceedingly complicated because effectively
16 every single program depending on how it's
17 aggregated will have different relative
18 errors. I don't know whether it pays to go
19 into the reasons for that or whether you can
20 accept that as what the situation is, but as
21 a result, trying to calculate out relative
22 errors on a study like this that will

Page 414

1 subsequently be aggregated at a later point is
2 exceedingly difficult and cumbersome. If we
3 had a set of numbers that we did, we could
4 produce it, something along these lines, very
5 hard. And they will differ all over the place
6 and need separate calculations for each.

7 JUDGE STRICKLER: Excuse me,
8 counsel. Can you define that term formally,
9 relative errors?

10 THE WITNESS: Relative error would
11 be the relationship of the standard error to
12 the number that's being measured. So if we
13 produced a 10 rating, for example, and it had
14 a standard error of 2.5 points, it would be a
15 25 percent relative error. And so it's a
16 gauge of how tight the fit will be. It's kind
17 of a direct reflection of standard error.

18 The reason why it differs is that
19 one of the key components in calculating
20 either standard error or relative error over
21 time is how much is coming from unique
22 individuals. So it's not just the sample

Page 415

1 size. It's whether there's a correlation of
2 viewing between events. And so the net result
3 is each program will have different
4 correlations or each aggregation will have
5 different correlations and different sample
6 sizes, causing it to again be very difficult.

7 BY MR. BOYDSTON:

8 Q You've testified a number of times
9 in these proceedings. I understand going back
10 a significant amount of time.

11 MR. HARRINGTON: Asked and
12 answered, Your Honor.

13 MR. BOYDSTON: There's a little
14 more to it.

15 BY MR. BOYDSTON:

16 Q Have you ever testified on behalf
17 of Settling Devotional Claimants?

18 A I actually don't recall. I've
19 done so many of these. I don't remember as
20 people have gone in and out of these
21 situations. I'm also a little bit unclear on
22 exactly what the question is asking.

Page 416

1 Q Sorry about that. What I was
2 asking is have you ever testified in these
3 proceedings or proceedings before the CARP or
4 before its predecessor the CRT on behalf of
5 Settling Devotional Claimants prior to now?

6 A Again, I can't remember off the
7 top of my head whether I have specifically
8 done it. I have certainly been cross examined
9 by the devotionals. I know that.

10 (Laughter.)

11 Q Have you testified on behalf of
12 anyone other than the MPAA in these
13 proceedings?

14 A Again, I don't recall. I have
15 done work for other claimants. I do not
16 recall whether I was specifically called for
17 those studies independent of the work that
18 I've done with the MPAA. But we are
19 fundamentally Nielsen is a fence-sitter,
20 although I'm testifying for the MPAA. I'm
21 here to testify about what we did and we can
22 and have done work for other claimant parties.

Page 417

1 Q Nothing further.

2 CHIEF JUDGE BARNETT: Mr.

3 Harrington?

4 MR. HARRINGTON: Yes, Your Honor,

5 just one or two questions.

6 CROSS EXAMINATION

7 BY MR. HARRINGTON:

8 Q Mr. Lindstrom, in your experience

9 reviewing viewing data, have you found that

10 viewing is constant across a 24-hour day or

11 does it change from quarter hour to quarter

12 hour? Let's assume national aggregate

13 numbers.

14 A Change in which way, if you could

15 just --

16 Q So do the same number of people

17 watch television generally, all programs at

18 say six in the morning or six in the

19 afternoon?

20 A No, it changes throughout the

21 course of the day.

22 Q It does. And are -- how would you

Page 418

1 -- would you say that viewing during the hours

2 of say 2 a.m. or 6 a.m. are relatively low as

3 compared to other hours during the day?

4 A They tend to be relatively low,

5 yes.

6 Q And based upon your experience in

7 doing this for many years, am I correct that

8 starting at the hour of 2 a.m. viewing is

9 quite low and then at some point say at about

10 5 o'clock it builds up again and that the

11 lowest viewing level would be what, 2:30, 3:00

12 o'clock in the morning?

13 A It tends to be in that type of

14 neighborhood, but I couldn't give you the

15 specifics.

16 Q Okay, so if someone took the

17 viewing levels nationally at 1:30 a.m. and

18 drew a linear interpolation and reduced it

19 each quarter hour until, or half hour, until

20 6:30 a.m., so that the lowest viewing levels

21 are at 6 a.m., would that be a fair way to do

22 that?

Page 419

1 A I would tend not to do linear

2 relationships in terms of television viewing

3 overall.

4 Q Thank you very much. That's all I

5 have.

6 CHIEF JUDGE BARNETT: Mr.

7 Olaniran?

8 REDIRECT EXAMINATION

9 BY MR. OLANIRAN:

10 Q Good morning, Mr. Lindstrom. Greg

11 Olaniran for MPAA. I just have a couple of

12 very quick questions.

13 Just so we're clear, this zero

14 viewing idea we're talking about, when you're

15 looking at a particular station on a

16 particular date at a particular quarter hour

17 and the specific households that are viewing

18 that station, is that your understanding of

19 what the zero viewing instances are?

20 A They're instances of particular

21 stations, particular households, particular

22 days and particular quarter hours, yes.

Page 420

1 Q And you spoke --

2 A And if I could add on, and

3 particular weeks.

4 Q Okay.

5 A So that it's not an instance of

6 Monday at 8 across all weeks. It's Monday at

7 8 on February 2nd.

8 Q Thank you. You spoke in terms of

9 fragmentation as probably accounting for the

10 difference between say the incidence of zero

11 viewing in some prior years versus say when

12 you compare those prior years to say the

13 period from 2002 to 2003. What do you mean by

14 fragmentation in the marketplace? Are you

15 talking in terms of programming?

16 A It was mainly meant to be a

17 reflection of saying that television usage for

18 individual stations has declined over time and

19 has declined considerably for individual

20 viewing sources. And part of the reason for

21 that HUT levels are tending to be about the

22 same meaning the number of people using

Page 421

1 television is about the same, but the
2 individual stations have gone down. And the
3 most likely scenario for that is simply there
4 are more stations. Cable systems have more
5 channels. There are more channels that are
6 available. And so the viewing is getting
7 divided up to a greater extent. And so a
8 situation with more zero cells as one piece of
9 what could cause that would be simply saying
10 viewing is declining for individual stations
11 overall, so it's not surprising it would occur
12 here.

13 CHIEF JUDGE BARNETT: May I
14 inquire?

15 MR. OLANIRAN: Oh, sure.

16 CHIEF JUDGE BARNETT: Mr.
17 Lindstrom, is there any way that Nielsen
18 measures Netflix streaming or Hulu or any of
19 those other sources of TV light time?

20 THE WITNESS: We're doing that
21 now. That's all part of the way that the
22 measurement system has changed. It's actually

Page 422

1 some of the streaming sources of video have
2 been causing the biggest headaches in the
3 business right now, but we have gotten to a
4 point at this point where we're now beginning
5 to include PC usage. We're beginning to
6 include on-demand. It doesn't have to be
7 viewed simultaneously. And our measuring
8 services like Netflix and Hulu to be able to
9 track. It's a very big component for the
10 industry, but also very hard as you can
11 imagine.

12 CHIEF JUDGE BARNETT: But for the
13 period relevant to this case, there was no
14 consideration of DVD usage? I guess that was
15 the in technology at that point or videotapes
16 or any other -- when the TV was on and the
17 source of the signal was something other than
18 cable or broadcast?

19 THE WITNESS: It would not be
20 included. So it's not part of the overall
21 television usage. If there were degrees of
22 more DVD viewing, it would end up showing

Page 423

1 declines in traditional television usage.

2 But those are not -- they're
3 reflected in the numbers that we're producing,
4 but they're not included them if that makes
5 sense.

6 CHIEF JUDGE BARNETT: Okay.

7 THE WITNESS: They would impact,
8 you'd see those impacts, but not specifically
9 included.

10 CHIEF JUDGE BARNETT: Thank you.

11 BY MR. OLANIRAN:

12 Q Your general point seems to be
13 that in addition to more stations, let's say,
14 these additional media services are
15 necessarily competing with broadcast stations
16 and that could account for some of the lower
17 numbers for the broadcast stations. Is that
18 a fair statement?

19 A It's a fair statement that there's
20 been a considerable degree of competition that
21 has come on, you know, through the years and
22 to the extent that it was occurring during the

Page 424

1 period of this study, I couldn't say, but it
2 has, in fact, been an ongoing change within
3 the marketplace since probably the '80s.

4 Q Thank you. No further questions,
5 Your Honor.

6 JUDGE FEDER: Going back to Judge
7 Barnett's question, similarly, is there
8 anything in these data that reflect DVR usage,
9 delayed viewing of broadcast programming using
10 a DVR?

11 THE WITNESS: DVRs at that point
12 in time were very small and wouldn't have been
13 a significant player. We would have included
14 videotaping, if there was playback, but it
15 would only be included if it had occurred
16 during the week in question. Remember,
17 somebody is only keeping this diary for a
18 week's time. So effectively, there would be
19 some degree of taping that would occur that
20 would not have been in here. I don't want to
21 say that it was reflecting all of that. I
22 think it's probably a more accurate way to

Page 425

1 think about it as being live viewing.

2 JUDGE FEDER: Thank you.

3 CHIEF JUDGE BARNETT: Do the

4 questions from the bench raise questions for

5 counsel?

6 MR. BOYDSTON: Yes, but I also

7 have a question to follow up on the redirect.

8 CHIEF JUDGE BARNETT: All right.

9 RECROSS EXAMINATION

10 BY MR. BOYDSTON:

11 Q Mr. Lindstrom, I wanted to ask you

12 about fragmentation which Mr. Olaniran asked

13 you about. To lay a foundation for that

14 though I need to ask a question. I've known

15 Nielsen to be around for as long as I know,

16 but why don't you give me a better answer or

17 better information than that. How long has

18 Nielsen been doing this -- been in this

19 business of TV ratings?

20 A It goes back into the '50s and

21 they've been in the market research business

22 before that.

Page 426

1 Q Okay, and when in the 1950s,

2 that's a whole decade, but to the extent we

3 can collectivize it, from what I know there

4 were three national networks, correct, and

5 then there were independent stations around

6 the country. Is that a fair explanation of

7 the TV landscape at that time?

8 A I couldn't tell you the exact

9 number of networks. They've kind of come and

10 gone and gone in and out of business, but it

11 certainly has been a reasonable definition of

12 what the marketplace looked like many years

13 ago.

14 Q Okay, and my questions on this are

15 certainly questions for an expert because this

16 is something that I don't think anyone else

17 here perhaps knows and that's why I'm asking

18 you. In terms of fragmentation, fragmentation

19 was there much fragmentation from say the dawn

20 of the TV era in the '50s to the 1960s or was

21 that fairly constant, if you know?

22 A Actually, could you restate that?

Page 427

1 I'm sorry.

2 Q Sure. Were the number of TV

3 stations in the United States, did they

4 increase appreciably between the 1950s and the

5 1960s? I'll make it more specific, say

6 between 1965 and 1969? Was there a

7 significant increase in stations?

8 A I couldn't tell you.

9 Q At some point was there a

10 significant increase in stations over the

11 station landscape from the 1950s?

12 A Again, I am not an expert on

13 historical television. I've got a pretty good

14 idea on what was going on from '78 when I

15 joined Nielsen on, but prior to that I

16 couldn't answer definitively.

17 Q Was there an increase in TV

18 stations from say 1978 to 1990 that was

19 noticeable or significant?

20 A There would have been an increase

21 both in terms of stations and cable sources of

22 programming.

Page 428

1 Q Do you have an estimate as to what

2 sort of percentage growth there was during

3 that time period?

4 A I couldn't tell you.

5 Q How about the difference in the

6 number of stations and cable systems or cable

7 channels rather from when you started in 1978

8 and say 2000, was there an appreciable change

9 or increase?

10 A There would be an appreciable

11 change, but I couldn't dimension the size of

12 it. Cable systems went from 20 channels being

13 a big one to 100 channels being a small one.

14 The distribution technologies and the

15 programming to fill it has grown extremely

16 rapidly.

17 Q And what I'm trying to get a

18 handle on is when that growth occurred. Your

19 testimony in response to Mr. Olaniran's

20 question was there's been a huge increase in

21 the number of stations and that's decreased

22 viewership on them all, correct? That was

Page 429

1 your testimony to Mr. Olaniran's question,
2 correct?

3 A My answer to why you might find an
4 increase in zero viewing was that there has
5 been increases in fragmentation, but to the
6 degree to be able to give specific growth
7 numbers, I couldn't do offhand to say it
8 occurred in 1988 or whatever the period of
9 time was. It's just there has been a general
10 flow from 1978 when I began working at
11 Nielsen. There was three networks. The three
12 network share was 90 and a program was
13 canceled if it didn't have a 30 share. And
14 nowadays if somebody got a 30 share, that
15 would be a super event. And it has been a
16 continuum based upon, as I said, ease of
17 distribution, digital, as the technology
18 simple growth in cable. Cable penetration has
19 gone from 25 percent during that period of
20 time up to 90, all of which leads to increases
21 in channels. So it's not a clear cut case of
22 going the number of broadcast stations has

Page 430

1 increased. It's going at that point in time 25
2 percent of people had increases in channels
3 because of cable and now it's become virtually
4 ubiquitous.

5 So there's a lot of factors at
6 play, but there's no question the average
7 number of channels that people can receive has
8 gone up and gone up considerably.

9 Q And to that point you used a
10 particular metric. You said when you started
11 out if a network program didn't get a 30
12 share, it might be canceled. How would you
13 characterize that situation today? What's the
14 -- I know it's a generalization, but how do
15 you generalize that figure today? What does
16 a network program have to get to avoid
17 cancellation as a general matter?

18 A Again, it varies all over the
19 place, but for a variety of reasons. It is
20 substantially lower than that. It's in the
21 teens at this point in time, can still be
22 considered a healthy number.

Page 431

1 Q My follow up to Judge Feder's
2 question was how -- he asked about DVR viewing
3 and I was curious with regard to the Nielsen
4 meter, how does a Nielsen meter, does a
5 Nielsen meter detect and take note of and
6 record a DVR event?

7 A It does now. It didn't during the
8 time in question in the early 20002.

9 Q Thank you. Nothing further.

10 CHIEF JUDGE BARNETT: Mr.
11 Harrington?

12 MR. HARRINGTON: Just one
13 question?

14 CHIEF JUDGE BARNETT: You may.

15 RECROSS EXAMINATION

16 BY MR. HARRINGTON:

17 Q Mr. Lindstrom, we've used a couple
18 of different terms here. We talked about
19 ratings and about shares and you talked about
20 a 1 rating was good and now an 18 share is
21 good. Could you explain for the record the
22 difference between a rating point and share?

Page 432

1 A Sure. A rating is a percentage of
2 a universe that was watching something, so
3 let's say that there's 100 million households
4 in the United States as a very rough number.
5 If 10 million were watching a particular
6 programming during the average minute, it
7 would be 10 million divided by 100 million or
8 10 percent. That's a 10 rating. It's the
9 percentage of the universe that would be
10 viewing it.

11 A share is really looked at -- and
12 that's an absolute level. A share is a
13 relative one in order to see how you're doing
14 competitively. So taking that same example,
15 if the percentage of people which is the HUT
16 level, Households Using Television, I
17 shouldn't say percentage of people, but
18 percentage of households, was 50, 50 percent
19 of them were viewing during the period in
20 question, and you had 10 percent that were
21 tuned to your channel, it's 10 divided by 50
22 or 20 share. So in that scenario, you would

Page 433

1 have a 10 rating and a 20 share.

2 Q Thank you.

3 CHIEF JUDGE BARNETT: Thank you,

4 Mr. Lindstrom. You may be excused.

5 THE WITNESS: Thank you.

6 (The witness was excused.)

7 CHIEF JUDGE BARNETT: Mr.

8 Olaniran.

9 MR. OLANIRAN: We will call Dr.

10 Jeffrey Gray.

11 WHEREUPON,

12 DR. JEFFREY GRAY

13 WAS CALLED FOR EXAMINATION BY COUNSEL FOR THE

14 MOTION PICTURE ASSOCIATION OF AMERICA AND,

15 HAVING FIRST BEEN DULY SWORN, WAS EXAMINED AND

16 TESTIFIED AS FOLLOWS:

17 MR. OLANIRAN: May I proceed, Your

18 Honor?

19 CHIEF JUDGE BARNETT: Yes, you

20 may.

21 MR. OLANIRAN: Thank you.

22 DIRECT EXAMINATION

Page 434

1 BY MR. OLANIRAN:

2 Q Good morning, Dr. Gray. My name

3 is Greg Olaniran and I'm counsel for MPAA.

4 Would you please state your name for the

5 record and spell it?

6 A Yes, it's Jeffrey Gray, J-E-F-F-R-

7 E-Y G-R-A-Y.

8 Q And what is your educational

9 background?

10 A I have a Ph.D. in Economics from

11 the University of Pennsylvania and also an

12 undergraduate degree in Economics from the

13 University of California at Santa Cruz.

14 Q Where do you work?

15 A I work at Deloitte Financial

16 Advisory Services, LLP.

17 Q And what position do you currently

18 hold at Deloitte?

19 A I'm a principal and also the

20 national leader of their Economic and

21 Statistical Consulting Group.

22 Q And what are your responsibilities

Page 435

1 in that position?

2 A Well, I have various

3 administrative responsibilities including

4 hiring into the group, setting compensation,

5 overseeing staffing levels, representing the

6 group in leadership functions and meetings.

7 But my primary responsibility really is client

8 service which is providing economic and

9 statistical consulting services to companies,

10 government agencies and sometimes indirectly

11 via law firms.

12 Q And where were you prior to

13 Deloitte?

14 A Well, prior -- I should say I

15 started at Deloitte in 2002, but then from

16 2006 in the summer through 2009, I left

17 Deloitte and was with Huron Consulting Group.

18 Q Prior to your first stint at

19 Deloitte, would you please provide with a

20 sense of your work experience at all of the

21 other places, where you worked over the last

22 several years?

Page 436

1 A Sure. I worked for both large and

2 small economic consulting shops. I also spent

3 a year at the White House, the President's

4 Council of Economic Advisors.

5 Q And describe briefly the subject

6 matter of your specialty.

7 A Sure. In general, I focus on

8 understanding and studying markets, how prices

9 and quantities are determined in those markets

10 and how market imperfections or distortions

11 affect those equilibrium prices and

12 quantities. I would say my specialty is

13 analyzing data associated with those markets,

14 often large amounts of data, to draw

15 conclusions regarding those alleged or actual

16 imperfections and distortions.

17 Q And what are the specific fields

18 in terms of -- how would you define those

19 different fields?

20 A I would say economics, statistics,

21 and econometrics.

22 Q What is the distinction among --

Page 437

1 how do you distinguish between -- among those
 2 three fields?

3 A Good question. I would say
 4 economics is the study of the sort of
 5 production, allocation, and consumption of
 6 goods and services, very broadly speaking.

7 Statistics, also broadly speaking,
 8 is the study of the collection, analysis, and
 9 the interpretation of data.

10 Econometrics is the intersection
 11 of those two disciplines. It's the
 12 application of statistical methods to economic
 13 data to provide content to economic
 14 relationships being studied.

15 Q And how long have you worked in
 16 these fields?

17 A Approximately 25 years.

18 Q Have you taught also in these
 19 fields?

20 A Yes.

21 Q And where did you teach?

22 A I taught at the University of

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1 Illinois at Urbana-Champaign. I was a tenured
 2 track assistant professor there. I also
 3 taught while I was a grad student at the
 4 University of Pennsylvania. I taught at the
 5 University of Pennsylvania as well as co-
 6 taught a course in the Business School there
 7 called Wharton.

8 Q Are you published?

9 A Yes.

10 Q In what areas?

11 A I've been published in peer-
 12 reviewed journals in the sort of general area
 13 applied microeconomics with a special focus on
 14 labor economics.

15 Q And have you served as a referee
 16 for peer-reviewed journals?

17 A Yes. Throughout my career, I've
 18 been asked to serve as a referee to judge the
 19 appropriate use of economics and statistics
 20 when people submit publications.

21 Q Do you have any experience in
 22 media and entertainment industry?

Page 439

1 A Some consulting experience. I've
 2 done work on behalf of large metropolitan
 3 newspapers. I was also engaged by outside
 4 counsel for a performance rights organization,
 5 also known as a PRO to assess the economic
 6 value of a blanket license, giving certain
 7 companies the right to perform music from the
 8 PRO's library on their internet sites.

9 Q Have you done any work related to
 10 cable television industry?

11 A Yes. I've also been engaged by
 12 outside counsels for CSOs who have been
 13 involved in I guess either negotiations and/or
 14 contract disputes with basic cable channels
 15 concerning the programming on those channels,
 16 how that programming has changed over time,
 17 and the associated viewership of those
 18 programs and channels.

19 Q And have you previously testified
 20 either before this body, the CARP, the CRT, or
 21 any other Court or regulatory body?

22 A I have not testified before this

Page 440

1 body, but I've testified before both
 2 international and Federal Courts in the United
 3 States, both written and orally.

4 MR. OLANIRAN: Your Honor, at this
 5 point, I'd like to offer Dr. Gray as an expert
 6 in the field of economics, statistics, and
 7 econometrics?

8 MR. BOYDSTON: No objection.

9 MR. HARRINGTON: No objection.

10 CHIEF JUDGE BARNETT: Dr. Gray is
 11 so qualified.

12 BY MR. OLANIRAN:

13 Q Dr. Gray, what were you asked to
 14 do in this proceeding?

15 A Yes, I was asked to propose an
 16 allocation methodology of the cable royalty
 17 funds attributable to the program suppliers
 18 category between 2000 and 2003, between IPG
 19 represented claimants and MPAA represented
 20 claimants.

21 I was also asked to review the
 22 methodology proposed by IPG and its associated

Certificate of Service

I hereby certify that on Thursday, April 05, 2018 I provided a true and correct copy of the Designated Prior Testimony of Paul B. Lindstrom, Oral Testimony in Docket No. 2008-2 CRB CD 2000-2003 (Phase II), Transcript pp. 280-324 and 368-433 (June 3, 2013). to the following:

Devotional Claimants, represented by Benjamin S Sternberg served via Electronic Service at ben@lutzker.com

Independent Producers Group (IPG), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Signed: /s/ Lucy H Plovnick